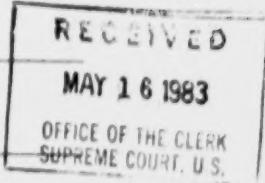


IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982



STATE OF MICHIGAN,

Petitioner,
vs.
JESSIE ANTHONY,
Respondent.

ON PETITION FOR A WRIT OF
CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF MICHIGAN

RESPONDENT'S BRIEF IN OPPOSITION

AFFIDAVIT
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ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

BRIEF FOR RESPONDENT IN OPPOSITION

Respondent Jessie Anthony respectfully requests this Honorable Court to deny the petition for writ of certiorari.

OPINIONS BELOW

Review is sought for the opinion of October 6, 1982, by the Michigan Court of Appeals (Petition Appendix A, pp. 1a-5a). The opinion is reported as People v. Jessie Anthony, 120 Mich Ap 207; _____ NW2d ____ (1982). The Michigan Court of Appeals order denying rehearing is attached to the Petition as Appendix B. The order of The Michigan Supreme Court denying leave to appeal is attached to the Petition as Appendix C.

COUNTERSTATEMENT OF QUESTION PRESENTED

WHETHER THE MICHIGAN COURT OF APPEALS PROPERLY APPLIED STATE CONSTITUTIONAL PRINCIPLES BY SUPPRESSING EVIDENCE SEIZED DURING A NON-CONSENSUAL WARRANTLESS SEARCH OF A SUSPECT'S DWELLING SOME 15 TO 30 MINUTES AFTER THE ROBBERY WHERE THE HOUSE WAS UNDER THE CONTROL OF FOUR POLICE OFFICERS, THE OFFICERS WERE IN NO DANGER, NO ONE SAW THE SUSPECTS ENTER THE HOUSE, AND THERE WAS NO TESTIMONY THAT VALUABLE EVIDENCE WAS IN DANGER OF BEING DESTROYED?

THE STATUTES INVOLVED

Article I, Section 11 of the Michigan Constitution provides:

"The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state.

COUNTERSTATEMENT OF THE FACTS

On October 30, 1979, around 3:00 p.m., a robbery took place at a clothing store located at 15738 Livernois, Detroit, Michigan. According to the complainant, Seymour Greer, a black male entered his office with a pair of pants over his arm and announced a "stick-up" (R-I, 22). This man and another black male stole jewelry, cash and fifteen men's suits then ran across the street with a third man (R-I, 28-30; 60).

The police arrived at the scene within five or six minutes of the robbery (R-I, 32). The officers spoke with Mr. Greer and his employee, Mrs. Whitlow, for approximately five to ten minutes (R-I, 89). A civilian, Sylvester Fields, walked up to the police and told them he knew where the people lived "that went in the store" (R-I, 65). Mr. Fields testified that he had observed three men carrying new clothing and running through the alley around 2:00 or 2:30 in the afternoon (R-I, 69). After awhile he went across the street and talked to the officers (R-I, 65). He led them to the respondent's home (R-I, 88-90).

At the house, three Detroit officers set up surveillance and called for a supervisor (R-I, 90, 91). Sergeant Howell arrived at the scene and discussed the situation with Officer Chesney (R-II, 5). Sergeant Howell went to the front door and knocked several times, heard some running and men talking, announced that they were police officers and then forced open the door (R-II, 5).

Respondent and two other men were found hiding in the house. \$384.00 and a woman's diamond ring were confiscated from respondent (R-II, 18). Fourteen men's suits were confiscated in an upstairs bedroom (R-I, 94). Cash and jewelry were found on the other two men (R-I, 93, R-II, 22).

Respondent testified that he lived at the address searched (R-II, 56).

The Michigan Court of Appeals reversed respondent's conviction for armed robbery holding that the trial court erred in failing to suppress the evidence seized in the house without a warrant. As authority for their holding, the court cites both

Federal and State constitutional provisions relating to search and seizure. Similarly, in the course of their analysis, both state and federal decisions are utilized. The court found no exigent circumstances to justify dispensing with the warrant requirement. Rehearing was denied by the Michigan Court of Appeals on December 2, 1982. The Michigan Supreme Court denied leave to appeal on February 28, 1983.

REASONS FOR DENYING THE WRIT

I. THE MICHIGAN COURT OF APPEALS DECISION IS FOUNDED ON STATE CONSTITUTIONAL LAW, NOT FEDERAL

In Orr v. Orr, 440 US 268; 99 S Ct 1102; 59 LEd 2d 306 (1979) this Court held that state court judgments anchored on an independent and adequate state ground will not be reviewed. If ambiguity exists as to whether the state court decision was based on federal or state grounds, this Court may remand the matter to the state court to make a determination of whether their decision is grounded on state or federal constitutional grounds, or both State of California v. Judith Krivda, 409 US33; 34 LEd 2d 45, 93 S Ct 32, reh den 409 US 1068, 34 LEd 2d 520, 93 S Ct 549 (1972).

The Michigan Court of Appeals decision in the instant case is sufficiently supported by established Michigan Constitutional provisions and local case precedent to provide an independent and adequate nonfederal basis for it. The decision below relies on Article I, Section 11 of the Michigan Constitution of 1963, which is similar but not identical to the Fourth Amendment to the United States Constitution. The two-fold test applied by that court requiring a showing of both probable cause and exigent circumstances is supported by numerous local decisions, People v. Mullaney, 104 Mich App 787, 792; 306 NW2d 347 (1981); People v. Gwinn, 47 Mich App 134; 209 NW2d 297 (1973) and People v. Dugon, 102 Mich App 497; 302 NW2d 209 (1980).

Payton v. New York, 445 US 573; 100 S Ct 1379; 63 L Ed 2d

639 (1980) while supportive of the Michigan court's decision, is by no means necessary to it. The decision in Payton, id., merely reconfirms the existing state of search and seizure law under the Michigan Constitution.

Similarly, in discussing Warden v. Hayden, 387 US 294; 87 S Ct 1642; 18 LEd 2d 782 (1967), the Michigan Court of Appeals in no way indicates it is relying on federal constitutional law in reaching its decision. That court cites two Michigan decisions supporting their finding of no exigent circumstances (People v. VanAuker, 111 Mich App 478; ____ NW2d ____ (1981), People v. Woodard, 111 Mich App 528, ____ NW2d ____ (1981)).

Since the decision being attacked stems from a state court and is adequately supported by state constitutional provisions, the decision of the Michigan Court of Appeals should not be reviewed by this Honorable Court.

II. NO SUBSTANTIAL FEDERAL QUESTION IS INVOLVED IN THE INSTANT CASE

- A. THE MICHIGAN COURT OF APPEALS CORRECTLY HELD THAT THERE EXISTED NO EXIGENT CIRCUMSTANCES TO JUSTIFY THE WARRANTLESS ENTRY AND SEARCH OF RESPONDENT'S DWELLING FIFTEEN TO THIRTY MINUTES AFTER A ROBBERY WHERE THE HOUSE WAS UNDER THE CONTROL OF FOUR POLICE OFFICERS, THE OFFICERS WERE IN NO DANGER, NO ONE SAW THE SUSPECTS ENTER THE HOUSE, AND THERE WAS NO TESTIMONY THAT VALUABLE EVIDENCE WAS IN DANGER OF BEING DESTROYED.

Assuming that the Michigan Court of Appeals based their decision on the United States rather than the Michigan Constitution, that court correctly applied the Fourth Amendment of the United States Constitution and the decisional law of this Honorable Court to the facts of this case. There is no difficulty posed by this case which requires review by this Court. The Michigan Court of Appeals decision does not demonstrate any flawed interpretation or misunderstanding of the federal or state rules governing the exigent circumstances exception to the warrantless search of a suspect's home.

In its opinion, the Michigan Court of Appeals correctly started from the premise that a warrantless search is unreasonable absent a showing by the people that the police acted based on probable cause and in response to an exigent circumstance establishing a delineated exception to the warrant requirement, Coolidge v. New Hampshire, 403 US 443; 91 S Ct 2022; 29 LEd 2d 564 (1971). Those circumstances were correctly

identified as: (1) for the protection of police officers or others; (2) to prevent the loss or destruction of evidence, or; (3) to prevent the escape of the suspects. People v. Dugan, 102 Mich App 497; 302 NW2d 209 (1980).

Applying the above principles to the instant case, the court noted that the police officers were merely told by a Sylvester Fields that he knew where the people involved in the robbery lived, not that the suspects and evidence were actually present at the house searched. This fact clearly distinguishes the instant case from Warden v. Hayden, supra. Whereas in Warden, the officers were told that the suspect had entered the house moments earlier; the record in the instant case reveals that the officers had no way of knowing that the suspects had in fact returned to their dwelling or having returned there, were still there fifteen to thirty minutes after the robbery.

In dealing with the various "exigent circumstances" identified above, the Michigan Court of Appeals goes on to state:

"In the case at bar, the three officers had the house under control. They were in no danger and there was no testimony that the police believed defendant could escape or would destroy valuable evidence. Exigent circumstances were lacking in this case. People v. Jessie Anthony, 120 Mich App 207 1 NW2d (1982).

The facts clearly support a finding of a lack of exigent circumstances as well as a finding (which was never made) of a lack of probable cause.

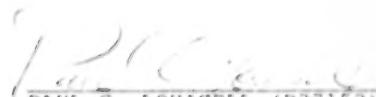
Petitioner mistakenly asserts that the Michigan Court of Appeals decision in the instant case as well as in other cases cited in their opinion are tantamount to removing the "exigent

"circumstances" exception to the warrant requirement from search and seizure analysis. In the instant case the Court of Appeals expressly considered the factual bases necessary to justify a warrantless search before concluding that the officers lacked the necessary exigent circumstances to enter the house without a warrant. If, as petitioner suggests, the Court of Appeals has decided that under Payton v. New York, all warrantless searches in a suspect's home are invalid, the analysis reviewed above would hardly be necessary.

CONCLUSION

For all the foregoing reasons, Respondent respectfully requests this Honorable Court to deny the Petition for Writ of Certiorari.


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PAUL C. LOUISELL (P27152)

IN THE
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Respondent.

STATEMENT AS TO MAILING

I, JOHN M. RICKEL, attorney for Respondent, hereby state, pursuant to Rule 28.2, that the following papers pertaining to the above captioned cause were deposited in the United States Government mail receptacle in the Renaissance Center, Detroit, Michigan 48243, within the time for filing said papers, and that the same were properly addressed to the Clerk of the United States Supreme Court and that first class postage was prepared.

The papers so mailed were:

Appearance Form
Motion for Leave to Proceed in Forma Pauperis
Affidavit
Respondent's Brief in Opposition
Statement of Mailing
Proof of Service



JOHN M. RICKEL (P19432)
Rickel, Earle & Robb
100 Renaissance Center
Suite 1575
Detroit, Michigan 48243
(313) 259-3500



PAUL C. LOUISELL (P27152)

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Respondent.

PROOF OF SERVICE

STATE OF MICHIGAN))
) SS.
COUNTY OF WAYNE)

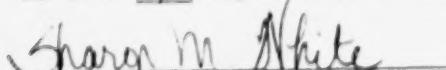
PATRICIA L. MOHASKE, being first duly sworn, deposes and says that on May 12, 1983, she mailed one copy of:

Appearance Form
Motion for Leave to Proceed in Forma Pauperis
Affidavit
Respondent's Brief in Opposition
Statement of Mailing

TO: Wayne County Prosecutor
Frank Murphy Hall of Justice
1441 St. Antoine - Room 1200
Detroit, Michigan 48226


PATRICIA L. MOHASKE

Subscribed and sworn to before
me this 5th day of May, 1983.



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

No.

82-1680

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,

vs.

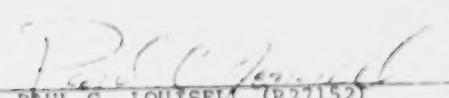
JESSIE ANTHONY,
Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

NOW COMES JESSIE ANTHONY, RESPONDENT in the above captioned cause, by his attorneys, Rickel, Earle & Robb, by Paul C. Louisell, and requests this Honorable Court to grant leave to proceed in forma pauperis pursuant to Rule 46. The Respondent's affidavit in support of this motion is attached hereto.

RICKEL, EARLE & ROBB

BY: 
JOHN M. RICKEL (P19432)

BY: 
PAUL C. LOUISELL (P27152)
Rickel, Earle & Robb
100 Renaissance Center
Suite 1575
Detroit, Michigan 48243
(313) 259-3500

Dated: May 12, 1983

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

No.

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

vs.

JESSIE ANTHONY,

Respondent.

AFFIDAVIT TO ACCOMPANY MOTION
FOR LEAVE TO PROCEED IN FORMA PAUPERIS

STATE OF MICHIGAN))
COUNTY OF WAYNE) SS.

I, JESSIE ANTHONY, being first duly sworn according to law, depose and say in support of my motion for leave to proceed in forma pauperis, without being required to prepay costs or fees:

1. I am the Respondent in the above captioned cause; I am a citizen of the United States of America.
2. Because of my poverty I am unable to pay the costs of defending myself in this cause in this Honorable Court; I am unable to give security for the same.
3. I further swear that the responses I have made to the questions and instructions below relating to my ability to pay the cost of responding to the petition for writ of certiorari are true:

- (a) I am presently unemployed.
- (b) I last worked in 1979 at Blue Light Lawn; my income was approximately \$125.00 per week.

(c) I receive \$145.00 per month in general assistance payments plus \$75.00 per month in food stamps. I reside at 7740 Chalfonte and pay the landlord \$140.00 per month for rent.

(d) I have received no income in the last twelve months from any business, profession or other form of self employment, or in the form of rent payments, dividends, or other sources. I have no savings or checking accounts or accumulated cash. I own no real estate, stocks, bonds or notes.

(e) I was unable to afford retained counsel at any of the lower court proceedings. My present attorney, Paul C. Louisell, was appointed to represent me on appeal by the trial court after I signed an affidavit of indigency dated May 14, 1980.

Further I say not.

JESSIE ANTHONY

Subscribed and sworn to before
me this 24th day of May, 1983.

Sharon M. White

SHARON M. WHITE
Notary Public, Macomb County, MI
My Commission Expires Feb. 4, 1985